



## CITY DEVELOPMENT DEPARTMENT

### ZONING BOARD OF ADJUSTMENT MEETING MINUTES CITY COUNCIL CHAMBERS, 2<sup>ND</sup> FLOOR, CITY HALL JUNE 11, 2012 1:30 P.M.

Chair Aguilar called the meeting to order at 1:31 p.m.

The following Board Members answered roll call:

Mr. Rick Aguilar, Chair  
Mr. Rigoberto Mendez, Vice-Chair  
Mr. Ken Gezelius  
Mr. Robert Garland  
Mr. Scott Walker  
Mr. Rick Cordova  
Mr. Robert Concha, Jr.  
Mr. James Wolff  
Mr. Lamar Skarda

The following City Staff were present:

Ms. Linda Castle, City Development Department, Zoning Board of Adjustment Coordinator  
Mr. Alex Hoffman, City Development Department, Lead Planner  
Mr. Juan Estala, City Development Department, Chief Plans Examiner  
Ms. Kristen Hamilton, City Attorney's Office, Assistant City Attorney

#### **CHANGES TO THE AGENDA**

##### **PZBA12-00017**

*Staff recommends postponing the case for four (4) weeks until the next regularly scheduled meeting and that the request be heard at that time.*

#### **MOTION:**

*Motion made by Mr. Garland, seconded by Mr. Cordova AND UNANIMOUSLY CARRIED TO ACCEPT THE CHANGES TO THE AGENDA.*

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**ITEM 1:**

**PZBA12-00017                      12597 Gilded Sun Drive                      Rodolfo S. Jaramillo**  
**Staff recommends postponing the request to the next ZBA meeting and that the Board hear the request at that time.**

*(See Changes to the Agenda)*

**ITEM 2:**

**PZBA12-00019                      10629 Jetrock Drive                      Bill and Mary Murray**  
Applicants request a Special Exception under Section 2.16.050 C (Rear Yard Setback) in an R-4 (Residential) zone. This would allow the enclosure of a 13' by 10' porch, of which a 13' by 3' portion is proposed to encroach into the rear yard setback and to be located to within 16 feet of the rear property line. The required front and rear yard cumulative total setback is 45 feet in the R-4 zone district. The request is to add a bathroom by enclosing an existing porch. The applicant previously received ZBA approval on May 21, 2007, to legalize a 19'10" by 11' patio that had been enclosed, case #ZBA07-00058. **STAFF RECOMMENDATION IS APPROVAL OF THE REQUEST AS IT MEETS THE REQUIREMENTS OF THE SPECIAL EXCEPTION C.**

Ms. Castle gave a PowerPoint presentation and noted that Staff did not receive any phone calls, letters, and/or emails in favor of or in opposition to this request.

Chair Aguilar asked if Board Members had any questions and/or comments. There were none.

Mr. and Mrs. Murray, property owners, were present.

Chair Aguilar asked if Board Members had any questions of the property owners. There were none.

Chair Aguilar asked if anyone in the audience wished to speak in favor of or in opposition to the request. There was no response.

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**MOTION:**

*Motion made by Mr. Garland, seconded by Mr. Gezelius AND UNANIMOUSLY CARRIED TO APPROVE.*

**ITEM 3:**

PZBA12-00020                      214 Balboa Road                      Julio and Amparo Diaz  
Applicants request a Special Exception under Section 2.16.050 C (Rear Yard Setback) in an R-3 (Residential) zone. This would allow a 25.2' by 27' addition, of which a 25.2' by 12.2' portion is proposed to encroach into the rear yard setback and to be located to within 12 feet of the rear property line. The required front and rear yard cumulative total setback is 50 feet in the R-3 zone district. The request is for a new addition, a portion of which encroaches in the required rear yard setback. **STAFF RECOMMENDATION IS FOR APPROVAL AS IT MEETS THE REQUIREMENTS OF THE SPECIAL EXCEPTION C.**

Ms. Castle gave a PowerPoint presentation and *noted Staff received one phone call; however, the caller did not register any positive or negative opinion regarding the request.*

Chair Aguilar asked if Board Members had any questions and/or comments.

Mr. Joaquin Santoyo, representing the applicants, responded to questions and/or comments from Board Members regarding:

1. The rest of the drawings have not been submitted to the city; however, he brought them with him should the Board Members like to see them;
2. To his knowledge, the storage shed will be removed upon completion of the construction project;
3. The storage shed is located on the property owner's rear property line;

Chair Aguilar asked if anyone in the audience wished to speak in favor of or opposition to the request.

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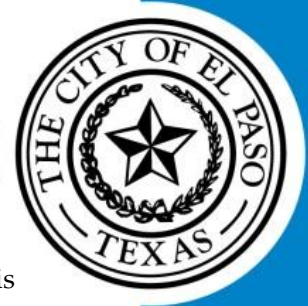
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Ms. Mary Mutnick, property owner next door to the applicants, noted she is wheelchair bound. She commented on:

1. Safety concerns regarding the proposed addition:
  - a. Palm and mulberry trees are hanging on her fence; additionally, due to lightening and not watering, the trees are a fire hazard;
  - b. Constructing the proposed addition so close to the trees and her back yard fence;
  - c. Relocation of the very large storage shed from the back yard to the side of the home;
  - d. Three windows of the storage shed are covered/blacked out;
  - e. Neighbors have several dogs;
  - f. Proposed addition, is this two-story;
  - g. Too crowded/too many things in their back yard, not enough room to relocate the storage shed to the back yard;

Ms. Castle showed photos of the applicant's back yard.

**FOR THE RECORD**

Mr. Cordova noted, for the record, that the storage shed is missing/not showing on the site plan.

To Ms. Mutnick, Chair Aguilar explained that the Board must approve if the Special Exception meets the Code requirements.

Chair Aguilar asked if Board Members had any further questions and/or comments. There were none.

Chair Aguilar asked if anyone in the audience wished to speak in favor of or in opposition to the request. There was no response.

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**1<sup>st</sup> MOTION:**

*Motion made by Vice-Chair Mendez, seconded by Mr. Gezelius TO APPROVE.*

Prior to the vote, Mr. Garland suggested adding the following language to the motion *"to approve pending the removal of the storage shed because the storage shed is not shown on the site plan."*

**2<sup>nd</sup> MOTION:**

*Motion made by Vice-Chair Mendez, seconded by Mr. Gezelius TO APPROVE WITH THE CONDITION THAT THE STORAGE SHED NOT BE A PART OF THE PERMIT.*

*Chair Aguilar asked if Board Members had additional questions and/or comments.*

Mr. Santoyo reiterated as long as the storage shed is removed after the construction is completed. Now, suppose he wanted to put some of the sensitive moisture materials in the storage shed, that would be very helpful because there is nothing to cover the cement material. He asked the Board if they would let him utilize the storage shed during the construction project, he would remove the shed upon completion.

Mr. Estala noted the storage shed is not in compliance with the Code. Mr. Estala questioned how long the storage shed would be left in its current location.

Mr. Santoyo responded he would like to keep the storage shed in its current location for the duration of the construction project. It was his intent to use the storage shed to store cement, tools, construction equipment, etc.; however, if the Board directs him to remove the storage shed, he will.

Ms. Castle noted that the property owners are allowed a storage shed; however, the shed cannot be located in the side yard.

Mr. Estala agreed with Ms. Castle and commented on the covered windows.

Mr. Walker questioned if it were permissible for the storage shed to be relocated to the front yard or somewhere else.

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Ms. Mutnick gave a chronological history regarding the relocating of the storage shed and her safety concerns for her neighbors.

Per Ms. Mutnick's statement, Chair Aguilar stated the storage shed is encroaching into the side yard setback.

Ms. Castle explained the setback measurements for location of the storage shed, as it is currently located, and in the rear yard.

Mr. Skarda explained the property owners do not necessarily have to remove the storage shed; however, it will have to be moved to a location that is in compliance with the code.

**3<sup>RD</sup> MOTION:**

*Motion made by Vice-Chair Mendez **TO APPROVE WITH THE CONDITION THAT THE SHED IS REMOVED AS SOON AS THE PROJECT IS FINISHED.***

*There was no second. The motion failed.*

Ms. Castle clarified the location of the storage shed is non-compliant with the code; therefore, it should be located in the rear yard.

**3<sup>RD</sup> MOTION AMENDED:**

*Motion made by Mr. Skarda **TO REQUIRE THE STORAGE SHED NOT BE REMOVED BUT MOVED TO A DIFFERENT LOCATION.***

*There was no second. The motion failed.*

**4<sup>TH</sup> MOTION:**

*Motion made by Vice-Chair Mendez, seconded by Mr. Garland **TO APPROVE WITH THE CONDITION THAT THE SHED IS COMPLETELY REMOVED AS SOON AS THE PROJECT IS FINISHED.***

**AYES:** Mr. Garland, and Vice-Chair Mendez

**NAYS:** Messrs. Gezelius, Walker, Chair Aguilar, Messrs. Cordova, Concha, Wolff, and Skarda

*The Motion failed. (2-7)*

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**5<sup>th</sup> AND FINAL MOTION:**

*Motion made by Mr. Garland, seconded by Mr. Walker AND UNANIMOUSLY CARRIED TO RELOCATE OR REMOVE THE TEMPORARY STORAGE AND MAKE IT ACCORDING TO THE PLAN THEY HAVE SHOWN HERE UNDER ITEM 3. AND APPROVE THE ITEM AS PRESENTED.*

Ms. Mutnick thanked Board Members for allowing her to express her concerns.

*Prior to the meeting, Staff distributed copies of the revised Site Plan and Wall Section*  
**ITEM 4:**

PZBA12-00021                      3817 Nations Avenue                      Benjamin Sanchez, Jr.  
Applicant requests a Special Exception under Section 2.16.050 K (15 years or more) in an R-4 (Residential) zone. This would allow a 20'-1" by 13' addition located to within 7'-1" feet of the rear property line and to within zero feet of the side setback. The required front and rear yard cumulative total setback is 45 feet in the R-4 zone district. The applicant inherited the property (see enclosed warranty deed) and is requesting to keep structures in the rear yard that are located within 5' of the main structure and that are built to 0' of the side property line and to within 7' of the rear property line. The 12'1" x 25'2" structure located at the east side property line has been registered as legally nonconforming, existing in the 1956 aerial. The applicant is requesting to legalize a 20'1" x 13' addition to that structure; the 1996 aerial shows that the addition existed 16 years ago. The current owner is not responsible for building the encroaching structures. **STAFF RECOMMENDATION IS FOR APPROVAL OF THE REQUEST FOR THE SPECIAL EXCEPTION, WITH A CONDITION THAT THE NONCONFORMING STRUCTURES SHALL NOT BE USED AS A DWELLING UNIT(S).**

Ms. Castle gave a PowerPoint presentation and noted that Staff did not receive any phone calls, letters, or emails in favor of or in opposition to this request. *She reiterated Staff recommends approval with a condition that the nonconforming structures shall not be used as a dwelling unit(s).*

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Mr. Benjamin Sanchez, Jr., property owner, stated that the additions to the existing home were being rented until March this year when his father passed away. He explained that he was trying to legalize the home so that he could sell it.

Mr. Garland reminded Mr. Sanchez, Jr. to inform any potential buyers of the Staff recommendation that the nonconforming structures not be used as dwelling unit(s).

Mr. Sanchez, Jr. responded he would inform the new owners; however, after that, it was not his responsibility.

Per the PowerPoint presentation, Mr. Cordova commented on a structure currently located in the side yard setback. He asked Staff if that structure could be used as storage.

Ms. Castle responded yes, it could. She stated that Mr. Sanchez, Jr. is requesting a Special Exception for the encroachment into the side setback for the addition in the rear, as storage only. The structure does not meet accessory dwelling unit requirements; therefore, Staff is requesting that the structure not be used as an accessory dwelling unit. Should this Board approve the Special Exception and Mr. Sanchez, Jr. sells the property; then the structure can only be used as storage.

Chair Aguilar asked if Board Members had any questions. There being none.

Chair Aguilar asked if anyone in the audience wished to speak in favor of or opposition to the request. There was no response from the audience.

**MOTION:**

*Motion made by Mr. Gezelius, seconded by Vice-Chair Mendez AND UNANIMOUSLY CARRIED TO APPROVE, AS RECOMMENDED BY STAFF.*

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*Prior to the meeting, Staff distributed copies of the revised Site Plan.*

**ITEM 5:**

PZBA12-00013                      12111 Swaps Drive                      Jose and Irma Fong  
Applicants request a Special Exception under Section 2.16.050 C (Rear Yard Setback) in an R-1 (Residential) zone. This would allow a 460 sq. ft. addition that is proposed to encroach in the required rear yard setback and to be located to within 48 feet of the rear property line. The required front and rear yard cumulative total setback is 100 feet in the R-1 zone district. The request is to encroach into the required rear yard setback for a portion of a new bedroom. The applicant has a building permit and has begun construction on additions and remodeling. There is an accessory building (garage) in the ~~westerly~~ **northerly** side yard which appears to be located approximately 45 feet from the front property line. Per Title 20, Zoning, Section 20.10.020 A.3., accessory buildings shall be located not less than 60 feet from the front lot line, a minimum of 5 feet from the main building, and shall comply with the side yard requirements. In the R-1 zone district, the minimum side yard setback is 15 feet. There is no building permit on file for the building; further, there appears to have been demolition of a building and construction of waterfall and fish ponds without permit. After requesting two postponements of this case, the applicant's representative has submitted a revised site plan that shows a 35' x 20' accessory building in the ~~westerly~~ **northerly** side yard and that meets the required 60 feet from the front property line and the required 15' minimum side setback in the R-1 zone district. The applicant will be demolishing approximately a 5' x 20' portion of the accessory building. **THE RECOMMENDATION IS FOR APPROVAL OF THE SPECIAL EXCEPTION C TO ENCROACH INTO THE REQUIRED REAR YARD SETBACK, WITH A CONDITION THAT THE ACCESSORY BUILDING IN THE ~~WESTERLY~~ **NORTHERLY** SIDE SETBACK IS LOCATED NO CLOSER THAN 60 FEET TO THE FRONT PROPERTY LINE AND NO CLOSER THAN 15 FEET TO THE ~~WESTERLY~~ **NORTHERLY** SIDE SETBACK.**

Ms. Castle gave a PowerPoint presentation and noted that Staff did not receive any phone calls, letters, and/or emails in favor of or in opposition to this request.

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Mr. Raymond Bonilla, representing the property owners, referred to the revised site plan drawings modifying the accessory structure to meet the required 60' front yard setback.

Chair Aguilar asked if anyone in the audience wished to speak in favor of or opposition to the request. There was no response from the audience.

**1<sup>st</sup> MOTION:**

*Motion made by Mr. Garland, seconded by Mr. Gezelius AND UNANIMOUSLY CARRIED TO APPROVE.*

Ms. Hamilton requested Mr. Garland amend his motion to include the Staff recommendations.

**1<sup>st</sup> MOTION AMENDED:**

*Motion made by Mr. Garland, seconded by Mr. Gezelius AND UNANIMOUSLY CARRIED THAT BOARD MEMBERS FOLLOW THE STAFF RECOMMENDATIONS AND APPROVE THE REQUEST AS STATED.*

**Other Business – Discussion and Action:**

**6. Approval of Minutes: May 14, 2012**

Chair Aguilar asked Board Members if they had any additions/corrections/revisions to the minutes. There was no response from the Board.

**MOTION:**

**Motion made by Mr. Skarda, seconded by Mr. Gezelius AND UNANIMOUSLY CARRIED TO APPROVE THE MAY 14, 2012 MEETING MINUTES.**

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7. Discussion and action regarding Section 2.16.050 J (Carport over a Driveway)

Ms. Castle explained Mr. Skarda had requested the item be posted on the agenda. He was wondering how Staff calculates the area of a dwelling to figure the 1/5 area that is allowed for a carport.

Mr. Skarda asked Staff to clarify the following questions:

1. *What is considered a dwelling*
2. *Does a dwelling include a garage, a covered patio (if connected to the main structure)*

He referred to Section 2.16.050 J. 4. of the Code, specifically:

4. ***The area of the carport shall not exceed one-fifth of the first-floor area of the dwelling and shall the carport rise above the highest point of the roof of the dwelling; and,***

Ms. Castle gave a PowerPoint presentation and read into the record *Section 20.02.3820.2. For residential buildings: the sum of the gross horizontal areas of the floors of a dwelling, exclusive of garages, atriums, stairwells, open porches and unoccupied basements, cellars, and attics, measured from the exterior faces of the exterior walls."*

Additionally, Ms. Castle read into the record *Section 20.02.382, the definition of Floor area, gross. "Gross floor area" means the sum of the gross horizontal areas of the floors of a building measured from the exterior faces of the exterior walls or from the centerline of common walls separating two buildings, but not including unoccupied attics, basements, cellars, stairwells or atriums (above ground level), and exclusive of areas open and unobstructed to the sky."*

For the first-floor area, Ms. Castle noted that, traditionally Staff has included garages.

Mr. Skarda responded when a 2,500 square foot house is listed, he thought that the garage would be excluded. It was his understanding that, at the time Staff and Board Members were establishing the size that would be allowed on a carport, he thought Staff and Board Members were referring to the residence or the square footage of the home. He explained that was

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why he looked up the definition of *dwelling*. As you well know, he wants to limit the size of these carports. If Board Members take into account covered porches, gazebos, etc., they just continue to grow. He noted that, to minimize taxes, garages are not included in the appraisal of residential taxes.

Ms. Castle confirmed that garages are separated in the Central Appraisal District (CAD). Ms. Castle read into the record the definition of "*dwelling – means a building, structure or a portion thereof designed or used primarily for residential occupancy with culinary and bathroom facilities. It does not include boats, trailers, motor homes, hotels, motels, motor lodges, boarding or lodging houses.*"

Ms. Skarda explained an easy way to find the square footage of a home would be to reference the Central Appraisal District square footage information then divide that number by 1/5. Whatever that number is, is the acceptable square footage size for the carport. Should someone under report the square footage of their home then the size of the carport would be smaller.

Ms. Castle noted that Staff does reference the CAD.

Chair Aguilar asked if this Board is authorized to add to the definition of *dwelling* to exclude *garage*.

Ms. Castle clarified Board Members can always recommend changing the Code. She thought, for the ZBA, the Board could make a determination what you were to consider as the area used for calculating the 1/5. If it is the dwelling area only; then that is what Staff will do.

Chair Aguilar reiterated the ZBA does not have a current definition of *dwelling*.

Mr. Skarda agreed and added that is part of the problem.

Mr. Garland referred to *Section 20.02.380.2 – Floor area*.

2. For residential buildings: the sum of the gross horizontal areas of the floors of a dwelling, exclusive of garages, atriums, stairwells, open porches and

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unoccupied basements, cellars, and attics, measured from the exterior faces of the exterior walls."

Ms. Castle stated Board Members could go with just the first-floor area and what that means.

In response to Ms. Castle's statement, Chair Aguilar referred to Section 2.16.050 J. 4. of the Code:

4. The area of the carport shall not exceed one-fifth of the first-floor area of the dwelling and shall the carport rise above the highest point of the roof of the dwelling; and,

Mr. Skarda felt there was enough room in the definition of *dwelling* - *a dwelling means a building, structure, primarily used for residential occupancy for culinary and bathroom facilities*. It seemed to him that if you are asked by this Board to consider that as livable space, which to him, cooking and bathroom facilities sound like livable square footage but does not include a garage, back porch, etc.

Mr. Cordova explained the problem he has is that everyone is doing carports, carports are out of control, regardless of what the house is like. It was his understanding that the intention was that affordable housing have some type of covered parking for vehicles. He was concerned that if the lot was big enough and the house is very small people could not have carports or have very small carports. He was unsure if there should be some kind of minimum carport for a house that would not be able to have a carport because the square footage is so small.

Ms. Castle hypothetically commented on code requirements for a covered carport. She explained the covered carport would be within the setback requirements, usually. Therefore, the ZBA is contending with whatever encroaches into the setback.

Mr. Skarda clarified that if the carport meets the setback requirements, you could have a huge carport.

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Ms. Castle responded you could, it would not have to match the house. Furthermore, it is only through the Zoning Board of Adjustment that size and architecture can be controlled.

Mr. Skarda stated those are the ones that are attached in front of the house. He explained that Mr. Garland has commented on applicants requesting a Special Exception for a Carport over a Driveway due to applicants converting their garage into livable space. Mr. Skarda stated garages are designed for the parking/storage of vehicles.

Ms. Castle asked Mr. Skarda if he would allow converted garages to be included in calculating the first floor area of the house.

Mr. Skarda responded yes, because now it is livable space.

Chair Aguilar clarified, according to what Ms. Castle has shown the Board today, he felt this issue was complete because it mentions covering the first-floor area, etc.

Mr. Skarda stated it is addressed; however, he was not sure if Staff or Board Members have been interpreting it correctly. Mr. Skarda thought that neither Board Members nor Staff should include porches, garages, etc. By clarifying what is expected, Board Members and Staff will know what to do without having to change any rules or definitions.

Chair Aguilar exclaimed Staff and Board Members have been put on notice.

Ms. Castle responded that is what Staff will do; furthermore, she can state to applicants *that that is what the Board said*. Additionally, applicants cannot take their Special Exception requests to the Board unless it meets requirements.

*No further discussion from the Board.*

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**MOTION:**

Motion made by Mr. Gezelius, seconded by Mr. Garland AND  
**UNANIMOUSLY CARRIED TO ADJOURN.**

---

Linda Castle, Senior Planner

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*District 7*

Steve Ortega

*District 8*

Cortney Carlisle Niland

**City Manager**

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